

**From:** [Vrooman Gary L](#)  
**To:** [Cora, Lori](#)  
**Subject:** RE: Portland Harbor Institutional Controls  
**Date:** Thursday, April 30, 2015 4:57:28 PM  
**Attachments:** [MB Easement NO.31530-EA.PDF](#)  
[M&B RNA Final CFR Feb 2009.pdf](#)  
[NOAA Nav Chart 18526 - Lower Willamette River.pdf](#)

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Hi Lori,

Here is DEQ's response to your question below. Please let me know if you have any questions.

DEQ is willing to use EESs on property that requires restricted uses under EPA's ROD. DEQ anticipates using EESs on privately owned land and has used EESs on land owned by Oregon state agencies in the past. Some examples of sites with institutional controls similar to what might be required at Portland Harbor are the McCormick and Baxter site and the Zidell site. I've attached as examples the EES used at M&B, for your information. In addition to the EES at the M&B site, DEQ has access agreements with the City for capping over the submerged sewer lines, BNRR for capping within the railroad right of way and Metro for the portion of the sediment cap on Metro land in Willamette Cove. Additionally, DEQ coordinates with the Oregon Marine Board on buoy placement.

At both the M&B and Gasco early action sites DEQ also used restricted navigation areas (RNAs) to control activities related to boat traffic that might cause damage to the cap. DEQ anticipates this may be necessary in the Portland Harbor cleanup as well because an EES or similar proprietary use restriction would not necessarily be effective controlling, or known of for that matter to boat traffic. I've attached examples of the RNAs. DEQ does not necessarily anticipate that harbor RNAs would need to be as restrictive as the M&B RNA in terms of allowed uses.

DSL has promulgated administrative rules, OAR 140, chapter 145, that control use of state-owned submerged or submersible land for activities related to remedial action. Under these rules, DEQ anticipates that DSL would provide an appropriate property interest (including a lease, an easement, or an access authorization) to an RP or group of RPs that would authorize the completion of the remedial action and necessary restrictions. The RP or group of RPs would then issue an EES or similar document to DEQ providing the institutional controls. DSL's agreement with the RP or RP group would also require compliance with required institutional controls.

Finally, state cleanup orders could also be used to impose and enforce institutional controls but this is generally not DEQ's preferred route for maintaining institutional controls.

Gary Vrooman  
Assistant Attorney General  
Natural Resources Section  
Oregon Department of Justice

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**From:** Cora, Lori [mailto:Cora.Lori@epa.gov]  
**Sent:** Tuesday, April 07, 2015 9:34 AM  
**To:** Vrooman Gary L  
**Subject:** Portland Harbor Institutional Controls

Hi, Gary. How are you? As part of developing the remedial alternatives and analyzing them under the 9 criteria, EPA is thinking about what institutional controls may be available and develop some information about their implementability, reliability and long-term effectiveness.

As you know, EPA's remedy will be taken primarily in the river and on some of the river banks. It is anticipated that some contamination will be left in place under caps or some other type of engineered remedy and at the subsurface where no active remediation may be done on the surface, thus, ICs will be necessary to protect the remedy and avoid exposure to subsurface contamination. The actions will be taken on both private property as well state-owned submerged lands.

Can you provide me with information on institutional controls that DEQ has used at cleanup sites that involved state-owned lands? Can DEQ use its hazardous substances easement and equitable servitude to restrict uses on sediment caps on state lands? If not, do you know how use restrictions may be executed and implemented on state lands? We understand DSL will have a role in accepting and implementing the restrictions. I'm looking for information on any state legal vehicle/tool(s) that may be available to assure protection of the remedy over time.

Will DEQ be willing to use easements and equitable servitudes on property that require restricted use under EPA's ROD? Any other information you or DEQ may have about institutional controls that have been used in the state of Oregon would be appreciated. I would appreciate getting a response by the end of April. Thanks. Please feel free to give me a call if you have questions.

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